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2 **UNITED STATES DISTRICT COURT**  
3 **WESTERN DISTRICT OF PENNSYLVANIA**

4 SHEILA PORTER,

5 Plaintiff

6 v.

7 CAVALRY PORTFOLIO SERVICES  
8 LLC

9 Defendant

} Case No.:

} **COMPLAINT AND DEMAND FOR**  
} **JURY TRIAL**

} (Unlawful Debt Collection Practices)

10  
11 **COMPLAINT**

12 SHEILA PORTER ("Plaintiff"), by her attorneys, KIMMEL &  
13 SILVERMAN, P.C., alleges the following against CAVALRY PORTFOLIO  
14 SERVICES LLC, ("Defendant"):

15  
16 **I. PRELIMINARY STATEMENT**

17 1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection  
18 Practices Act, 15 U.S.C. § 1692 et seq. (FDCPA).

19  
20 **II. JURISDICTION AND VENUE**

21 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d),  
22 which states that such actions may be brought and heard before "any appropriate  
23 United States district court without regard to the amount in controversy," and 28  
24 U.S.C. § 1331 grants this court supplemental jurisdiction over the state claims  
25 contained therein.

3. Defendant conducts business in the Commonwealth of Pennsylvania, and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

### III. PARTIES

6. Plaintiff is a natural person residing in Oil City, Venango County, Pennsylvania.

7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company with corporate headquarters located at 7 Skyline Drive, 3<sup>rd</sup> Floor, Hawthorne, New York 10532.

9. Defendant is a debt collector as that term is defined by 15 U.S.C. § 1692a(6), and sought to collect a consumer debt from Plaintiff.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

### IV. BACKGROUND ON THE FDCPA

11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides

1 for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the  
2 FDCPA declare certain rights to be provided to or claimed by debtors, forbid  
3 deceitful and misleading practices, prohibit harassing and abusive tactics, and  
4 proscribe unfair or unconscionable conduct, both generally and in a specific list of  
5 disapproved practices.

6 12. In particular, the FDCPA broadly enumerates several practices  
7 considered contrary to its stated purpose, and forbids debt collectors from taking  
8 such action. The substantive heart of the FDCPA lies in three broad prohibitions.  
9 First, a “debt collector may not engage in any conduct the natural consequence of  
10 which is to harass, oppress, or abuse any person in connection with the collection  
11 of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false,  
12 deceptive, or misleading representation or means in connection with the collection  
13 of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair  
14 or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §  
15 1692f. The FDCPA is designed to protect consumers from unscrupulous  
16 collectors, whether or not there exists a valid debt, broadly prohibits unfair or  
17 unconscionable collection methods, conduct which harasses, oppresses or abuses  
18 any debtor, and any false, deceptive or misleading statements in connection with  
19 the collection of a debt.

20 13. In enacting the FDCPA, the United States Congress found that  
21 “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt  
22 collection practices by many debt collectors,” which “contribute to the number of  
23 personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of  
24 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing  
25

1 laws and procedures for redressing debt collection injuries to be inadequate to  
2 protect consumers. 15 U.S.C. § 1692b.

3 14. Congress enacted the FDCPA to regulate the collection of consumer  
4 debts by debt collectors. The express purposes of the FDCPA are to “eliminate  
5 abusive debt collection practices by debt collectors, to insure that debt collectors  
6 who refrain from using abusive debt collection practices are not competitively  
7 disadvantaged, and to promote consistent State action to protect consumers against  
8 debt collection abuses.” 15 U.S.C. § 1692e.

9  
10 **V. FACTUAL ALLEGATIONS**

11 15. At all pertinent times hereto, Defendant was hired to collect a consumer  
12 debt allegedly owed by Plaintiff.

13 16. The alleged debt at issue arose out of transactions, which were primarily  
14 for personal, family, or household purposes.

15 17. Defendant constantly and continuously places collection calls to  
16 Plaintiff, sometimes calling up to two times in a single day, seeking and  
17 demanding payment for an alleged debt owed.

18 18. Defendant placed collection calls to Plaintiff through November 22,  
19 2010.

20 19. Defendant’s representative, Matt Bayles, called Plaintiff at her place  
21 of employment on November 2, 2010.

22 20. Matt Bayles threatened to have Plaintiff arrested if immediate  
23 payment was not made.

24 21. Matt Bayles threatened to seize Plaintiff’s property if immediate  
25 payment was not made.

1 22. Matt Bayles threatened Plaintiff with legal action if immediate  
2 payment was not made.

3 23. To the best of Plaintiff's knowledge, no lawsuit to date has been filed  
4 by Defendant.

5 24. Plaintiff informed Matt Bayles that her employer prohibits her from  
6 receiving personal telephone calls at work and to stop calling her there.

7 25. Despite this, Defendant continued to place collection calls to Plaintiff  
8 at her place of employment on November 3, 2010, November 9, 2010, November  
9 22, 2010 and November 27, 2010.

10 26. Defendant spoke with Plaintiff's co-worker, Karen, on November 19,  
11 2010 and stated it was calling regarding a personal matter involving Plaintiff.

12 27. Defendant spoke with Plaintiff's co-worker, Diane, on November 22,  
13 2010 and stated it was calling regarding a personal matter involving Plaintiff.

14 28. At no time did Defendant send to Plaintiff any written  
15 correspondence advising her of her right to request verification of the debt and  
16 dispute it.

17 29. Defendant conducted its collection activities in ways that were  
18 factually misrepresented and in violation of the FDCPA.

19  
20 **VI. CONSTRUCTION OF APPLICABLE LAW**

21 30. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry,  
22 deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes  
23 strict liability, a consumer need not show intentional conduct by the debt collector  
24 to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996);  
25 see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding

1 unintentional misrepresentation of debt collector's legal status violated FDCPA);  
2 Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

3 31. The FDCPA is a remedial statute, and therefore must be construed  
4 liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235  
5 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts  
6 interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d  
7 1162 (9th Cir. 2006). "Because the FDCPA, like the Truth in Lending Act (TILA)  
8 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in  
9 favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

10 32. The FDCPA is to be interpreted in accordance with the "least  
11 sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168  
12 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v.  
13 Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA  
14 was not "made for the protection of experts, but for the public - that vast multitude  
15 which includes the ignorant, the unthinking, and the credulous, and the fact that a  
16 false statement may be obviously false to those who are trained and experienced  
17 does not change its character, nor take away its power to deceive others less  
18 experienced." Id. The least sophisticated consumer standard serves a dual  
19 purpose in that it ensures protection of all consumers, even naive and trusting,  
20 against deceptive collection practices, and protects collectors against liability for  
21 bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at  
22 1318.

**VII. ALLEGATIONS**

**COUNT I**  
**DEFENDANT VIOLATED THE FAIR**  
**DEBT COLLECTION PRACTICES ACT**

33. Defendant violated the FDCPA based on the following:

a. Defendant violated §1692 generally;

b. Defendant violated §1692c(b) of the FDCPA by communicating with third parties in connection with the collection of Plaintiff's alleged debt.

c. Defendant violated §1692c(1) of the FDCPA by communicating with Plaintiff at her place of employment, a place known to be inconvenient to Plaintiff;

d. Defendant violated §1692c(3) of the FDCPA by communicating with Plaintiff at her place of employment after being informed that Plaintiff's employer prohibits such communication;

e. Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse the Plaintiff in connection with the collection of a debt;

f. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring repeatedly and continuously with the intent to annoy, abuse and harass Plaintiff;

g. Defendant violated §1692e(4) of the FDCPA by representing that non payment of the debt would result in the arrest of Plaintiff even though Defendant does not intend to take such action;

h. Defendant violated §1692e(4) of the FDCPA by representing

1 that non payment of the debt would result in the seizure of Plaintiff's property  
2 even though Defendant does not intend to take such action;

3 i. Defendant violated §1692e(5) of the FDCPA by threatening  
4 Plaintiff with legal action even though Defendant does not intend to take such  
5 action;

6 j. Defendant violated §1692e(7) of the FDCPA by falsely  
7 implying that Plaintiff had committed a crime and would be arrested;

8 k. Defendant violated §1692e(10) of the FDCPA in a deceptive  
9 means to collect a debt by threatening Plaintiff with legal action;

10 l. Defendant violated §1692e(10) of the FDCPA in a deceptive  
11 means to collect a debt by threatening to have Plaintiff arrested;

12 m. Defendant violated §1692e(10) of the FDCPA in a deceptive  
13 means to collect a debt by threatening to take Plaintiff's property;

14 n. Defendant violated §1692f of the FDCPA by using unfair and  
15 unconscionable means with Plaintiff to collect or attempt to collect a debt; and

16 o. Defendant violated §1692d(5) of the FDCPA by causing a  
17 telephone to ring repeatedly and continuously with the intent to annoy, abuse and  
18 harass Plaintiff;

19 p. Defendant acted in an otherwise deceptive, unfair and  
20 unconscionable manner and failed to comply with the FDCPA.

21  
22 WHEREFORE, Plaintiff, SHEILA PORTER, respectfully requests judgment  
23 be entered against Defendant, CAVALRY PORTFOLIO SERVICES LLC for the  
24 following:  
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- 1           a.     Declaratory judgment that Defendant's conduct violated the  
2 Fair Debt Collection Practices Act,  
3           b.     Statutory damages pursuant to the Fair Debt Collection  
4 Practices Act, 15 U.S.C. § 1692k,  
5           c.     Actual damages,  
6           d.     Costs and reasonable attorneys' fees pursuant to the Fair Debt  
7 Collection Practices Act, 15 U.S.C. § 1692k  
8           e.     Any other relief that this Honorable Court deems appropriate.  
9

10                               **DEMAND FOR JURY TRIAL**

11           PLEASE TAKE NOTICE that Plaintiff, SHEILA PORTER, demands a jury  
12 trial in this case.  
13

14                               RESPECTFULLY SUBMITTED,

15           DATED: 03/11/11

                              KIMMEL & SILVERMAN, P.C..

16           By: /s/ Amy L. Bennecoff

17                               Amy L. Bennecoff

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